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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/621,858

07/17/2003

Douglas Lew Richards

2271

1763

28004

7590

08/09/2006

SPRINT

6391 SPRINT PARKWAY

KSOPHT0101-Z2100

OVERLAND PARK, KS 66251-2100

EXAMINER

TRAN, DZUNG D

ART UNIT

PAPER NUMBER

2613

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

57

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,858	<b>Applicant(s)</b> RICHARDS ET AL.	
	<b>Examiner</b> Dzung D. Tran	<b>Art Unit</b> 2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

#### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,781,679. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the claims limitations found in the present application were previously set forth in the claims 1-32 of the U.S. Patent No. 6,781,679 (with only minor differences in scope, if any, between the corresponding limitations) such as identify the error on a first channel of the plurality channels, identify the error on a second channel of the plurality channels, identify the error on a third channel of the plurality channels

and identify the polarization mode dispersion base on determining the error occurs on the first, second and third channels.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Richards et al. U.S. Patent no. 6,781,679.

Regarding claims 1 and 11, Richards et al. disclose a method/apparatus of monitoring a communication network to identify polarization-mode dispersion, the method/apparatus comprising:

identifying an error on a first channel of a plurality of channels in the communication network (col. 8, lines 36-37);

identifying a second channel of the plurality of channels that is adjacent to the first channel (col. 4, lines 18-21, col. 8, lines 38-41);

determining if an error occurs on the second channel that is adjacent to the first channel; identifying a third channel of the plurality of channels (col. 8, lines 38-41);

determining if an error occurs on the third channel (col. 8, lines 42-44, 62-64);  
and

identifying the polarization-mode dispersion based on determining the error occurs on the second channel that is adjacent to the first channel and determining the error does not occur on the third channel (col. 8, lines 46-49).

Regarding claims 2 and 12, Richards et al. disclose identifying a second channel of the plurality of channels that is adjacent to the first channel comprises: identifying the second channel that is adjacent to the first channel on each optical link from an egress point for the first channel to an ingress point for the first channel (col. 4, lines 18-21, col. 8, lines 56-61).

Regarding claims 3 and 13, Richards et al. disclose identifying a third channel of the plurality of channels comprises: identifying the third channel on each optical link from the egress point for the first channel to the ingress point for the first channel (col. 8, lines 62-67).

Regarding claims 4 and 14, Richards et al. disclose identifying an error on a first channel comprises determining the error on the first channel at an egress point for the first channel, determining if an error occurs on the second channel comprises determining if the error occurs on the second channel at an egress point for the second channel and determining if an error occurs on the third channel comprises determining if the error occurs on the third channel at an egress point for the third channel (col. 2, lines 39-61).

Regarding claims 5, 6, 15 and 16, Richards et al. the second channel that is adjacent to the first channel comprises an adjacent channel having a wavelength shorter than a wavelength for the first channel and the second channel that is adjacent to the first channel comprises an adjacent channel having a wavelength longer than a wavelength for the first channel (col. 4, lines 18-28).

Regarding claims 7 and 17, Richards et al. disclose optical-to-electrical (e.g, optical receiver 342).

Regarding claims 8 and 18, Richards et al. disclose identifying an error on a first channel comprises: identifying a parity check error on the first channel (figure 3).

Regarding claims 9 and 19, Richards et al. disclose identifying an error on a first channel comprises: identifying if an error count for the first channel exceeds a threshold (figure 5).

Regarding claims 10 and 20, Richards et al. disclose the plurality of channels have a bit rate of at least 2.5 Gigabits per second (col. 7, lines 32-60).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Saunders et al. U.S. Publication no. 2002/0039217. Method of adaptive signal degradation compensation

b. Jacob U.S. Publication no. 2002/0138796. Intelligent performance monitoring in optical networks using FEC statics

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung D Tran whose telephone number is (571) 272-3025. The examiner can normally be reached on 9:00 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dzung Tran  
08/16/2006